



June 7, 1999

Ms. Joni M. Vollman
Assistant General Counsel
Office of the District Attorney
Harris County
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR99-1581

Dear Ms. Vollman:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124685.

The Harris County District Attorney (the "district attorney") received a request for a specified file. You state that most of the records at issue have been disclosed to the requestor, but you assert that some documents are protected from disclosure under section 552.108 of the Government Code, and under chapter 411 of the Government Code in conjunction with section 552.101 of the Government Code. The documents at issue are labeled Exhibits A and B.

You assert that Exhibit A is protected from disclosure under section 552.108 of the Government Code as information that was prepared by a prosecutor in anticipation or during the course of preparing for criminal litigation. You also assert that Exhibit A reflects the prosecutor's mental impressions or legal reasoning. Section 552.108(a)(3) provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted [from disclosure] if:

...

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Based upon your arguments and our review of the documents, we agree that the records which comprise Exhibit A are protected from disclosure under section 552.108(a)(3).¹

You assert that Exhibit B is criminal history record information (“CHRI”) that is protected from disclosure under provisions of chapter 411 of the Government Code, in conjunction with section 552.101 of the Government Code. Section 552.101 applies to information that is made confidential by law, including information made confidential by statute. Title 28, Part 20 of the Code of Federal Regulations governs the release of CHRI which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (the “DPS”) maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov’t Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies).


Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Other entities specified in Chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release the information except as provided by Chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We agree that Exhibit B is confidential CHRI and may not be disclosed to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts

¹We assume that the basic offense and arrest information has been released pursuant to section 552.108(c).

presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a long horizontal flourish extending to the right.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 124685

Encl. Submitted documents

cc: Mr. Ken J. McLean
Attorney at Law
1900 North Loop West, Suite 500
Houston, Texas 77018-8120
(w/o enclosures)